

REMARKS

Claims 1-10, 12-28 and 30-38 are pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks herein.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 10, 12-16, 18, 21, 28, 30, 31, 34-38 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Pat. No. 5,671,362 to Cowe et al. ("Cowe") in view of U.S. Pat. No. 4,961,533 to Teller et al. ("Teller"). This rejection is respectfully traversed.

Claims 1 and 21, as previously presented, include the features of comparing initial and current state output signals to determine a load change on a load storage device, and determining an identity of an item associated the load storage device from a plurality of items potentially included in a load positioned upon the load storage device based on the load change. Claim 1 includes the additional feature of the determining being executed by a processor that uses the load change as an input. Claim 34 includes the features of a database operable to store a plurality of load records, each load record corresponding to an item type, and a load monitoring system operable to input the load signals and access the database, to thereby output the item type corresponding to the load based on the load records.

Although, as discussed in further detail below, Cowe fails to disclose at least these features of claims 1, 21 and 34, and Teller fails to cure the deficient disclosure of Cowe, Applicants have further amended each of claims 1 and 21 in a genuine effort to advance prosecution of the instant application. More specifically, each of claims 1 and 21 have been amended to further provide that the feature of determining an identity of an item associated with the load storage device from a plurality of items potentially included in a load positioned upon the load storage device is further based on a pre-stored load associated with the item.

As discussed in further detail below, Cowe fails to disclose the above-discussed features of claims 1, 21 and 34, and Teller fails to cure the deficient disclosure of Cowe. Further, Teller teaches away from the present invention.

As discussed in detail in Applicants' previous response, which is expressly incorporated herein by reference in its entirety, Cowe is directed to a materials monitoring system that includes an electronic shelf unit that can sense and report product usage or withdrawals, by sensing the presence or absence of product items in storage on the shelf unit. The system of Cowe, however, can only initiate a query in response to an item being replaced, and cannot itself resolve the query and identify the product that was replaced. Instead, the identity of the replaced item is subsequently resolved by "manual inspection during the vendor's representative's next visit," requiring each product item to include a machine-readable label that is scanned to determine the identity of a particular product item.

Accordingly, and as set forth in Applicants' previous response, Cowe fails to disclose the features of comparing initial and current state output signals to determine a load change on a load storage device, and determining an identity of an item associated the load storage device from a plurality of items potentially included in a load positioned upon the load storage device based on the load change, much less the feature of the determining being executed by a processor that uses the load change as an input. Cowe also fails to disclose the features of a processor that determines an identity of an item associated with the load storage device from a plurality of items potentially included in a load positioned upon the load storage device based on the load change. Further, Cowe does not disclose the features of inputting the load signals and accessing a database, to thereby output an item type corresponding to the load, based on load records.

In view of the deficient disclosure of Cowe, the Examiner turns to Teller. Teller, however, fails to cure the deficient disclosure of Cowe, and actually teaches away from the present invention.

Teller is generally directed to an inventory control system that determines the volume contents of a plurality of containers (see col. 2, ll. 53-56, and Fig. 2). The system of Teller includes a plurality of assemblies 22 having a load cell 36, a light source 42 and a color sensor 48 associated therewith (see col. 5, l. 46-col. 6, l. 26). Each assembly 22 supports a single container 14 (see Figs. 1 and 2). Each container 14 is "uniquely identifiable by the wavelength

of the light reflected therefrom" based on a color patch 54 associated therewith (see col. 6, ll. 44-51). In operation, Teller provides that:

each bottle 14 at the bar 12 is uniquely identified by the color patch 54 thereon, which by comparison with the information previously input to the computer memory, determines the particular alcoholic beverage in that bottle. At the same time, the load cell 36 provides a signal indicative of the weight of that bottle 14 to the microcomputer 56, which is programmed to subtract therefrom the weight of the empty bottle, as stored in the computer's memory, leaving the weight of the liquid contents. The computer is further programmed to divide that weight by the specific gravity for the alcoholic beverage in question, thereby yielding the liquid volume in that specific bottle ...
(see col. 8, ll. 18-31; emphasis added)

Accordingly, Teller identifies the bottle resting on the assembly based on the detected color, and not the weight. Instead, the weight is used to calculate the volume of liquid that had been removed from the bottle. In fact, Teller boasts a "major advantage," which is achievable because "each bottle is always uniquely identified by the color patch 54 thereon" (see col. 8, ll. 33-42).

In view of the foregoing, Teller fails to disclose the features of determining an identity of an item from a plurality of items potentially included in a load positioned upon the load storage device based on the load change, much less the feature of the determining being executed by a processor that uses the load change as an input. Instead, Teller only provides a single item (i.e., a single container) on each load storage device, and uniquely identifies the single container based on a color patch associated therewith. Further, Teller also fails to disclose the features of inputting load signals and accessing a database, to thereby output an item type corresponding to the load, based on load records. Instead, Teller determines the item type corresponding to a color of the color patch associated with a particular container.

For at least the foregoing reasons, Teller fails to cure the deficient disclosure of Cowe. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

Applicants further note that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." (see MPEP §2141.02, citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)). As discussed below, Teller leads away from the claimed invention.

As discussed in detail above, the system of Teller uniquely identifies each container based on the color of a color patch associated therewith. Teller boasts a major advantage of the system disclosed therein, which is achieved because each container is uniquely identified based on color. Consequently, Teller teaches away from using a load change to identify an item. Further, and because Teller uses load change to identify a volume of liquid removed from an item, Teller could not itself be modified to identify a container based on load change. More specifically, because a load change of respective containers could be equal, the identity of a specific container could not be determined based on such a load change. For example, if 3 cl of a liquid were poured from a first bottle, and 3 cl of a liquid were poured from a second bottle, the system of Teller could not differentiate the type of liquids associated with the first and second bottles based on the amount of liquid poured. Consequently, Teller purposefully implements colors associated with each container to identify the type of liquid that was poured.

In view of the foregoing, Teller leads away from the present invention. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

Each of claims 10, 12-16, 18, 28, 30, 31 and 35-38 ultimately depends from one of claims 1, 21 and 34, which define over the asserted reference, as discussed in detail above. Consequently, each of claims 10, 12-16, 18, 28, 30, 31 and 35-38 also defines over the asserted reference for at least the same reasons. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

Claims 2-9, 19, 20, 22-27, 32 and 33 stand rejected under 35 U.S.C. 103(a) as being obvious over Cowe in view Teller, in further view of U.S. Pat. No.4,674,605 to McPherson et al. ("McPherson"). This rejection is respectfully traversed.

Each of claims 2-9, 19, 20, 22-27, 32 and 33 ultimately depends from one of claims 1 and 21, which define over the asserted reference, as discussed in detail above. Consequently, each of claims 2-9, 19, 20, 22-27, 32 and 33 also defines over the asserted reference for at least the same reasons. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

Claim 17 stands rejected under 35 U.S.C. 103(a) as being obvious over Cowe in view Teller, in further view of U.S. Pat. No.6,450,299 to Lysaught ("Lysaught"). This rejection is respectfully traversed.

Claim 17 ultimately depends from claim 1, which defines over the asserted reference, as discussed in detail above. Consequently, claim 17 also defines over the asserted reference for at least the same reasons. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

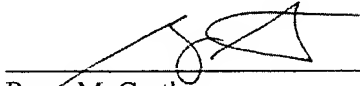
CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment. Applicants respectfully request consideration of all filed IDS' not previously considered, by initialing and returning each Form 1449.

No charges are believed due. However, if any fees are due, they are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No.13909-0141001.

Respectfully submitted,

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